

REMARKS

Claims 1-26 are pending in the present application. In the Office Action mailed May 18, 2006, the Examiner rejected claim 24 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner next rejected claims 1-6, 11-14, 17-19, and 21-24 under 35 U.S.C. §102(b) as being anticipated by Martin et al. (USP 5,809,479).

Claims 7-10, 15-16, and 20, 25-26 were objected to as being dependent upon a rejected base claim, but were indicated as otherwise allowable if rewritten in independent form. Claim 27 has been newly added herein and is believed to also be allowable.

Regarding the rejection under §112, Applicant has amended claim 24 to correct a typographical error. The phrase “the number of opportunities” has been corrected to “a number of times.” Applicant has further amended the claim for clarity. The present amendments are not intended to change the scope of the claim, but merely to make the usage of terms consistent throughout the claim.

In rejecting independent claims 1, 11, and 17, the Examiner stated that col. 2, line 24 through col. 4, line 54 of Martin et al. (nearly the entire detailed description thereof) teaches each and every element of the claims. The Examiner did not specifically identify which steps or components of Martin et al. correspond to which elements of the claims. However, even without a precise description of the Examiner’s beliefs regarding Martin et al., Applicant notes that each independent claim contains several elements which are not found in the disclosure of Martin et al.

With respect to claim 1, Martin et al. does not teach or suggest a database having the claimed fields or a shipment quality metric calculated by subtracting a customer requested date from a max ship date and adding a predetermined number of days thereto.

The system of Martin et al. uses a customer preferences database 12 and a sales orders database 20. At a minimum, neither database is disclosed as containing “a product category for each order” or a “max ship date,” as claimed. The customer preferences database 12 contains only fields relating to general delivery and reporting preferences of each customer. Col. 2, ll. 41-43. Martin et al. states that sales orders database 20 contains what is described as “individual customer order entries.” Arguably these could include the “customer requested date,” but that is only one of the fields presently claimed. Martin et al. does not further describe the contents of sales orders database 20 as including the remaining claimed fields. See Col. 3, ll. 34-36. Furthermore, Martin et al. does not disclose any method for ensuring that a shipped date was the last or “max” date on which the final portion of a customer’s order was shipped.

In addition, Martin et al. does not teach a shipment quality metric calculated as claimed. Specifically, claim 1 recites “subtracting the customer requested date from the max ship date,” “adding a predetermined number of days” thereto, and “determining a statistical calculation to indicate process quality” therefrom. Martin et al. describes calculating a “customer preferred ship date” by “subtracting the customer’s desired advance delivery time from the customer-requested delivery date.” Col. 3, ll. 42-45. However, such is not “subtracting the customer requested date from the max ship date” as claimed. Furthermore, the calculation described in Martin et al. of “whether a particular product delivery is on time” also does not anticipate the claimed method. Col. 5, ll. 27-40; Embedded Figs. at ll. 6, 15, 22. Simply determining whether deliveries were on time does not teach, suggest, or imply a step of adding a predetermined number of days to provide a shipment quality metric from which a statistical calculation of process quality is determined. Accordingly, the art of record does not specifically or inherently disclose each and every element of claim 1.

Similarly, claim 11 calls for a database including “a max ship date” and “a product category for a plurality of products” and for a calculation of “a shipment quality metric.” As discussed above, there is no teaching or suggestion to be found within Martin et al. which anticipates such claim elements. Claim 11 further calls for an instruction causing a processor to “ignore orders with no max ship date.” That is, the present invention as recited in claim 11 specifically provides for the consideration of max ship dates and the selection of only those orders having max ship dates. Since Martin et al. does not contain any disclosure of a measure for max ship dates, it cannot be said that Martin et al. teaches or suggests that invalid max ship dates should be ignored. Therefore, claim 11 is also patentably distinct from the art of record.

Claim 17 also calls for a database having data indicating “a max ship date” and “a product category for each product,” which is not taught or suggested by Martin et al. Further, claim 17 calls for an instruction causing a processor to “obtain the data from each order that has a valid max ship date.” Thus, the statistical computations for process capability include data regarding orders that have been shipped (i.e. have a ship date) and have a max ship date which is valid. Martin et al. does not particularize the data it uses as such. *See* Col. 5, ll. 27-40. Accordingly, claim 17 is also patentably distinct from the art of record.

Claim 27 is newly added. Claim 27 calls for a system along the lines of that already found allowable and is believed to clearly define over the prior art.

Therefore, in light of at least the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 1-27.

Applicant hereby authorizes charging of Deposit Account No. 07-0845 for one independent claim in excess of 20 associated with entering the aforementioned claim.

Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,

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